

Appendix H. Supporting Statement Question A8 –
Comments to the Federal Register Notice and Efforts for
Consultation

A8. Comments to the Federal Register Notice and efforts for consultation.

If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

First Federal Register Notice

Of the 46 comments received, 37 comments were related to the information collection.

The remaining nine comments were not within the scope of the information collection. A summary of the comments and associated FNS responses is presented below.

Burden Estimates

Two commenters provided input on the burden estimates described in the 60-day Federal Register Notice. One commenter, an SA, agreed with the revision of the hours for the reporting and recordkeeping burden, as well as the addition of the public disclosure burden. However, the other commenter disagreed with some of the reporting and recordkeeping burden estimates. This commenter (also an SA) argued that, while there has been a decrease in day care homes in recent years, there has also been an increase in at-risk afterschool meals and unaffiliated center sponsors. The agency stated that there has been fast and steady growth in the number of unaffiliated centers over the past five years. The commenter added that this growth has significantly increased burden hours for SA staff during the application process for new centers and during the administrative review process. The commenter added that a lack of Federal regulation and guidance regarding unaffiliated center sponsorships has led to competition issues and consistent influx of center transfers between sponsors. In addition, the commenter stated that Minnesota has seen continuous growth of immigrant populations participating in the CACFP

(both at the sponsor and site levels), requiring more SA time overall to explain the program in a culturally relevant manner.

FNS response: FNS took the above comments into consideration and adjusted the burden associated with certain reporting and recordkeeping requirements to better account for the complexity of some of the activities applicable to SAs. These requirements include:

- List of schools in which one-half of children enrolled are eligible for free or reduced-price meals (7 CFR 226.6(f)(1)(ix)(A)): For this reporting activity, FNS increased the estimated average number of hours per response from 15 minutes (0.25 hours) to 2 hours.
- Standard institutions and food service management company contract (7 CFR 226.6(i)): For this reporting activity FNS increased the estimated average number of hours per response from 15 minutes (0.25 hours) to 1 hour.
- Sponsoring organization agreement (7 CFR 226.6(p)): For this reporting activity, FNS increased the estimated average number of hours per response from 15 minutes (0.25 hours) to 6 hours.
- Collect and maintain on file CACFP agreements (Federal/State and State/institutions), records received from applicant and participating institutions, National Disqualified List/State Agency Lists, and documentation of administrative review (appeals), and Program assistance activities, results, and corrective actions (under 7 CFR 226.6): For this recordkeeping activity, FNS increased the estimated average number of hours per record from 1 hour to 5 hours.

FNS believes that the revised burden calculations represent realistic average hourly burden estimates for respondents to undertake the information collection activities covered in this ICR.

Streamlining CACFP

Many commenters encouraged FNS to make changes that streamline and reduce the burden of implementing CACFP. One commenter encouraged FNS to revise the CACFP application process to reduce burden for applicants. Another commenter encouraged FNS to reduce the frequency for site monitoring from three times per year to twice a year. Similarly, a sponsor encouraged less frequent review cycles for those sponsors who continually have great reviews.

Several commenters submitted similar comments that agreed with areas of improvement for CACFP that were identified in the report to Congress titled “Reducing Paperwork in the Child and Adult Care Food Program.” The areas of improvement identified by the commenters included the following: implement existing flexibilities to reduce paperwork, direct certification and ease documentation of children’s eligibility for CACFP benefits, establish a single blended rate for centers, simplify documentation of food service records required by SAs, annual eligibility for for-profit centers, eliminate budget requirements that are counterproductive to a fiscally responsible program operation, and embrace technology solution to improve integrity and reduce paperwork. Some commenters suggested allowing sponsors the ability to search the National Disqualified List (NDL) by the provider or principal’s birth date once again. Many of these commenters argued that the NDL website only allows first and last names to be searched,

thus complicating the process and increasing the chances of false positives when there could be multiple people with the same first and last name.

A few commenters provided input on the administrative burden associated with the At-Risk Afterschool Meals component of CACFP. One commenter stated that for the At-Risk Afterschool Meals Program, children should not be required to sign in and use lunch numbers and instead it should be sufficient for the provider to tally the number of meals provided. Another commenter said it is a challenge to ensure that adults leading groups participating in the At-Risk Afterschool Meals Snack or Supper Program (e.g., coaches of sports teams) turn in their attendance records. The commenter added that acquiring these attendance records and processing them is time consuming and burdensome.

To reduce burden, a sponsoring organization suggested that FNS eliminate annual child enrollment renewals if the sponsoring organization uses a software program. This commenter stated that it uses software for all recordkeeping and when a child's enrollment hours or days of care changes, an updated enrollment form is required or the software will disallow those meals not included in the enrollment days/hours. Further, the commenter asserted that agencies are financially impacted when staff are taken away from their regular duties to process enrollment renewals when the information in the software system is already current and correct.

A child care center commented that some of the CACFP guidelines are unrealistic and unnecessary, especially for small facilities. For example, the commenter stated that implementing the use of the "Journal Ledger" provided by CACFP had required the facility to completely reinvent its financial bookkeeping system and had been extremely time consuming. With regard to the documentation required for meal patterns and purchase of items, a commenter

stated that when providers are not serving a large volume of participants, there could be a small provider standard, since the funding level is not high. The commenter also recommended that when adults qualify for participation in adult day services' programs there should be no requirement to update all the records every year. The commenter recommended that updates should be required only if individuals are new or changing their status. Another commenter stated that one menu plan for multiple programs for students attending schools would decrease the paperwork for school food authorities. The commenter also encouraged FNS to streamline the application process where a school is participating in multiple Child Nutrition Programs. Two commenters argued that menu production reports are time consuming and redundant.

Another commenter more generally stated that efforts to bring uniformity and alignment between CACFP, the Summer Food Service Program, and the National School Lunch Program would reduce burden, increase the accuracy of paperwork, and increase regulatory compliance.

FNS response: FNS took the above comments into consideration. However, based on review of the information collection requirements, FNS has not made any modifications to burden or other aspects of this information collection at this time. FNS will continue to monitor how information is collected by those who administer CACFP, and will use the rulemaking process to streamline and reduce burden, where possible.

Other comments related to the CACFP ICR

A commenter stated that completing civil rights information for each CACFP site is an unnecessary burden because sites already comply with non-discrimination rules and estimates are provided in the Census data for these locations.

FNS response: Because the commenter did not provide any suggestions concerning the practical utility, need, or clarity of a specific information collection activity covered in this information collection, nor provided any comments concerning the estimated burden, FNS has made no modifications in response to this comment.

Comments not related to the CACFP ICR

Nine comments did not relate to the need, practical utility, quality, or clarity of the information collection, nor did they comment on the accuracy of the burden estimates or provide recommendations on minimizing the burden.

FNS response: Because none of these comments were within the scope of this information collection, FNS has made no modifications to the information collection as a result of these comments.

Second Federal Register Notice

Of the two comments received, one (from an SA) was related to the information collection. FNS determined that the other comment (from an individual) was not within the scope of the information collection as the commenter stated that the USDA should not administer the CACFP because the Department is incentivized to grow the Program without limit to give more food away. Summaries of the suggestions contained in the in-scope comment and associated FNS responses are presented below.

- The SA suggested that the purpose of the annual household CACFP enrollment records is not being fulfilled because the information usually becomes quickly outdated due to frequent schedule changes. Therefore, the commenter asserted the cross reference to these records to validate the accuracy of meal counts is inefficient, as monitoring staff resources

are lost trying to reconcile the information in meal count and enrollment records. For this reason, the commenter asserted that the burden imposed on households to collect this information is not justified. The commenter suggested that attendance records are a better measure for comparing whether meal counts are inflated.

FNS response: FNS acknowledges the SA's concerns regarding the necessity and practical utility of the information collection requirements associated with enrollment forms. The Agency is continuously seeking opportunities to streamline program requirements and reduce burden on the public. FNS will continue to monitor how the information collection is fulfilling the purpose of the requirements, and will use the rulemaking process to eliminate unnecessary paperwork where possible.

- Instead of household size income statements, the SA suggested that FNS either use a direct certification system to determine eligibility of CACFP participants and payments for centers or pay all meals at one reimbursement rate. The commenter reasoned that facilities are challenged to get these forms collected from households, the majority of overpayments results from errors from these forms, and household size income statement data can be inaccurate and are not verified.

FNS response: FNS will continue to monitor how information is collected by those who administer CACFP and will use the rulemaking process to streamline and reduce burden, where possible.

- The SA asserted that the ethnic and racial data information required to be collected is typically not used and that the process of visually identifying children based on their race and ethnicity encourages racial profiling.

FNS response: In May 2021, FNS published a policy memo stating that visual observation and identification by CACFP institutions and facilities is no longer an allowable practice for program operators during the collection of race or ethnicity data (Appendix E13). However, the general requirement to collect ethnic and racial data, outlined in the Program agreement (under 7 CFR 226.6(b)(4)), is consistent with the Department of Justice’s Title VI implementing regulations at 28 CFR 42.106(b) and would require a change through rulemaking in order to be removed.

- Regarding CACFP meal pattern requirements, the SA recommended that FNS eliminate the “Rule of Three” when determining whether grains served are whole grain-rich, commenting that the majority of Program operators find the Rule of Three difficult to understand due to the need to decipher between grains that are whole grains/flours, brans and germs, enriched grains/flours, grain derivatives, and non-creditable grains/flours. The commenter recommended returning to only looking at the first grain ingredient.

FNS response: FNS has determined that this suggestion is outside of the scope of the proposed information collection.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years even if the collection of information activity is the same as in prior years. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The names of the individuals with whom FNS consulted on the information collection requirements and their associated burdens are included under Question A.8 in the supporting

statement. Summaries of the suggestions provided by the consultants and associated FNS responses are presented below.

Number of Respondents

One consultant recommended increasing the number of respondents associated with the SA reporting requirement to develop/revise and provide sponsoring organization agreements between sponsor and facilities. Specifically, recommending increasing the number of respondents from 15 to 56 to reflect the increase in the number of sponsors of unaffiliated centers over the last three years. The representative asserted that each State and territory has at least one sponsor of unaffiliated centers.

In developing the burden estimate associated with the development/revision of sponsoring organization agreements between sponsor and facilities, FNS considered that these documents are revised periodically. FNS estimates that not all SAs revise their sponsor/facility agreements annually. For that reason, FNS estimates that, each year, 15 SAs will modify their agreements. FNS has not made any modifications to burden associated with this information collection requirement at this time.

Burden Estimates

One consultant commented on the time that it takes to put together notices and associated documentation, stating that the time to prepare the associated documentation does not appear to be reflected in the current hourly burden estimates. The consultant also suggested that the burden associated with the SA reporting requirement to develop/revise and provide sponsoring organization agreements between sponsor and facilities should be increased from 15 minutes (0.25 hours) to 6 hours, reasoning that there are no standard regulations on what should be

included in a sponsor/site agreement for sponsors of unaffiliated centers and, as a result, several States have separate agreements for each sponsor that they have in the State. Another consultant disagreed with the estimated burden associated with several SA and institution information collection requirements. Specifically, the consultant stated that, while notifying approval/disapproval of applications and sending notices of serious deficiencies is quick, the time leading to those actions can take weeks to an SA. The consultant also stated that, for SAs, providing sponsoring organizations a list of elementary schools in which at least one-half of the children enrolled receive free or reduced-price meals takes at least two hours (rather than 15 minutes (0.25 hours)), and that developing a standard contract for use between institutions and food service management companies could take months (rather than 15 minutes (0.25 hours)). The consultant stated that, for institutions, collecting and maintaining the records required by the SA (e.g., Program applications, enrollment documents, income eligibility forms), for a period of 3 years, takes much longer than one hour.

FNS took the above comments into consideration and adjusted the burden associated with certain reporting and recordkeeping requirements to better account for the complexity of some of the activities applicable to SAs. These requirements include:

- List of schools in which one-half of children enrolled are eligible for free or reduced-price meals (7 CFR 226.6(f)(1)(ix)(A)): For this reporting activity, FNS increased the estimated average number of hours per response from 15 minutes (0.25 hours) to 2 hours.
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FNS believes that the revised burden calculations represent realistic average hourly burden estimates for respondents to undertake the information collection activities covered in this ICR.

Burden Allocation

One representative questioned why the 7 CFR 226.10(e) reporting requirement associated with making adjustments to final claims for reimbursement is considered an SA burden when the institution has the burden of submitting the claim.

In estimating the burden associated with making adjustments to final claims for reimbursement under 7 CFR 226.10, FNS considered the burden incurred by both the institutions and the SAs. The burden calculations consider the time that institutions need to report the number of meals claimed for reimbursement to the SAs, as well as the time SAs need to make adjustments to final claims for reimbursement. For both types of respondents, the burden calculations assume that the activities are conducted on a monthly basis. Given that both types of

respondents are considered in the burden calculations, FNS has not made any modifications to burden associated with the information collection requirement.

Streamlining CACFP

Among more general comments about the need to revisit the necessity of the information collection requirements for SAs and program operators under CACFP, another representative called for uniformity and efforts to streamline CACFP and other Child Nutrition Programs.

FNS took the above comment into consideration. However, based on review of the information collection requirements, FNS has not made any modifications to burden or other aspects of this information collection at this time.

FNS consulted with these same representatives again to get feedback on the revised estimates under this reinstatement request, and received positive feedback on the reinstatement request, expressing support for the burden hours increases for certain activities.